IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.75 OF 2004
IN
CRIMINAL APPEAL NO. OF 2003

Chandrashekhar Anant Pandit ..Applicant

Vs.

M.M.Mathure & Anr. ..Respondents

...

Mr.Rahul S.Kate Advocate for Applicant
Mr.Ganesh Gole for Respondent No.1
Mr.Y.S.Shinde A.P.P. for the State

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CORAM: A.M.KHANWILKAR,J.
DATE : DECEMBER 8, 2005

P.C.

1. Heard the counsel for the parties. Leave to appeal granted. Appeal taken up for final disposal forthwith by consent as short question is involved. Mr.Gole waives notice for Respondent No.1. Mr.Y.S.Shinde waives notice for Respondent No.2. By consent, taken up for final disposal forthwith.

2. This Appeal takes exception to the order passed by the learned Chief Judicial Magistrate Satara dated October 13, 2003 dismissing the complaint filed by the Appellant against the Respondent No.1 in relation to offence punishable under Section 138

of the Negotiable Instruments Act, 1881 being S.C.C.No.18061 of 2001 on the ground of default. On going through the records in particular certified copy of Roznama which was produced at the hearing, it is seen that the Appellant had committed default for the first time on 13.10.2003 whereas the advocate for the Appellant as well as Appellant has been attending the Court proceedings before the trial Court on every singular date since institution of the complaint. In this backdrop, in my opinion, the approach adopted by the lower Court in dismissing the complaint and acquitting the accused under Section 256 of Code of Criminal Procedure is unacceptable. Indeed, no justification is forthcoming as to why the Advocate for the Appellant remained absent on the relevant date. Even so for the mistake of the Advocate the litigants ought not to suffer. In so far as the Appellant is concerned, the explanation has been offered in para 2 of the Appeal that the matter was placed before the 'Lok Adalat' for settlement on 21.9.2003 but no compromise could take place as the parties did not remain present. The Appellant could not remain present on the adjourned date i.e. 13.10.2003 as mentioned earlier as it was first default committed by the complainant, the matter

ought to have considered leniently by the trial Court. Besides, I find substance in the stand taken by the Appellant that if the complaint is restored to file, in all likelihood the matter may be settled between the parties. This stand taken by the Appellant will have to be considered at the appropriate stage by the trial Court. Accordingly, the impugned order is set aside. Instead the complaint is restored to file of the trial Court to be decided on merits in accordance with law. Ordered accordingly.

[A.M.KHANWILKAR, J.]